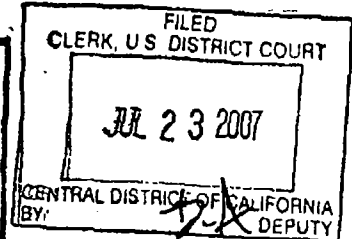
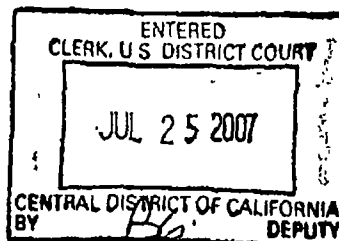


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10 UNITED STATES DISTRICT COURT
11
12 CENTRAL DISTRICT OF CALIFORNIA

13 THE CALIFORNIA DEPARTMENT OF
14 TOXIC SUBSTANCES CONTROL; THE
15 CALIFORNIA HAZARDOUS SUBSTANCES
16 ACCOUNT; THE CALIFORNIA
17 HAZARDOUS WASTE CONTROL
18 ACCOUNT; THE TOXIC SUBSTANCES
19 CONTROL ACCOUNT; and THE SITE
20 REMEDIATION ACCOUNT,

Plaintiffs,

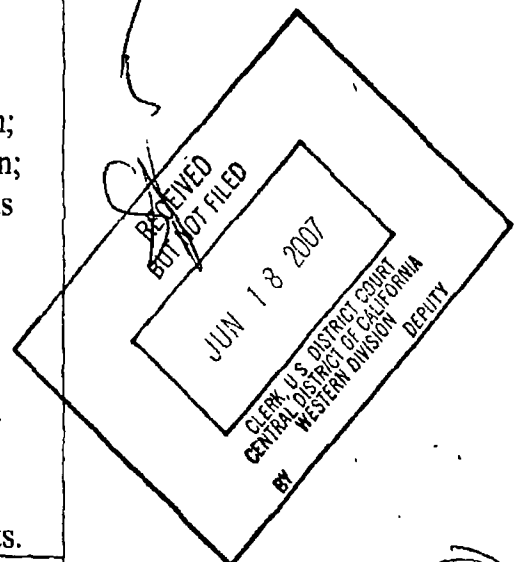
v.

21 HOLCHEM, INC., a California corporation;
22 SOCO WEST INC., a Delaware corporation;
23 HERMAN BENJAMIN, individually and as
24 trustee of the Benjamin Family Trust dated
25 October 13, 1987; ISABEL BENJAMIN,
26 individually and as trustee of the Benjamin
27 Family Trust dated October 13, 1987; and
28 CHASE CHEMICAL COMPANY, INC., a
dissolved California corporation,

Defendants.

12467
CASE NO. CV99-1267CM

SECOND CONSENT DECREE



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UNITED STATES DISTRICT COURT

11

CENTRAL DISTRICT OF CALIFORNIA

12

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14

THE CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL; THE
CALIFORNIA HAZARDOUS
15 SUBSTANCES ACCOUNT; THE
CALIFORNIA HAZARDOUS WASTE
16 CONTROL ACCOUNT; THE TOXIC
SUBSTANCES CONTROL ACCOUNT;
17 and THE SITE REMEDIATION
ACCOUNT,

18

Plaintiffs,

19

v.

20

21

SOCO WEST INC., a Delaware
corporation; HOLCHEM, INC.; HERMAN
BENJAMIN, individually and as trustee of
22 the Benjamin Family Trust dated October
13, 1987; ISABEL BENJAMIN,
23 individually and as trustee of the Benjamin
Family Trust dated October 13, 1987; and
24 CHASE CHEMICAL COMPANY, INC., a
dissolved California corporation.

25

26

Defendants.

27

28

CASE NO. CV99-1267CM

SECOND CONSENT DECREE

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1 Plaintiffs, the CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES
2 CONTROL (the "Department" or "DTSC"), the CALIFORNIA HAZARDOUS
3 WASTE CONTROL ACCOUNT, the CALIFORNIA HAZARDOUS
4 SUBSTANCE ACCOUNT, the TOXIC SUBSTANCES CONTROL ACCOUNT
5 and the SITE REMEDIATION ACCOUNT (each of these four State Accounts shall
6 collectively be referred to herein as the "State Accounts," and DTSC and the State
7 Accounts shall collectively be referred to herein as "Plaintiffs") originally filed a
8 complaint in this matter on November 30, 1999 (hereafter "Original Complaint"),
9 against HOLCHEM, INC. ("Holchem"), HERMAN BENJAMIN, individually and
10 as co-trustee of the Benjamin Family Trust dated October 13, 1987, ISABEL
11 BENJAMIN, individually and as co-trustee of the Benjamin Family Trust dated
12 October 13, 1987 and CHASE CHEMICAL COMPANY, INC., a dissolved
13 California corporation (Herman and Isabel Benjamin, both individually and as
14 trustees, and the Chase Chemical Company Inc. are hereafter collectively referred to
15 as the "Benjamin Defendants"). After the filing of the Original Complaint,
16 Holchem merged into Soco West, Inc. (hereafter "Soco West"). Plaintiffs thereafter
17 filed an amended Complaint to include Soco West as a defendant (the Complaint, as
18 amended, is hereinafter referred to as the "Complaint"). The Complaint sets forth
19 claims against Soco West and the Benjamin Defendants, pursuant to the
20 Comprehensive Environmental Response, Compensation, and Liability Act, 42
21 U.S.C. §9601, *et seq.*, as amended by the Superfund Amendments and
22 Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986)
23 ("CERCLA"), and includes a supplemental claim under California law, pursuant to
24 the Hazardous Substance Account Act, California Health and Safety Code § 25300,
25 *et seq.* (the "HSAA"). Portions of the claims asserted in the Complaint were
26 resolved by an earlier consent decree entered into in this action on April 25, 2000
27 ("First Decree").
28 ///

1 The Parties to this Second Consent Decree are the DTSC, the State Accounts,
2 and Soco West. The Parties enter into this Consent Decree (hereafter referred to
3 herein as the "Second Decree," "Decree" or "Consent Decree") in order to respond
4 to releases and/or threatened releases of hazardous substances in, on, under, or
5 migrating from the former Chase Chemical Facility located at 13540 and 13546
6 Desmond Street in Pacoima, California, pursuant to the terms of the remedy selected
7 for the Site (defined below) as set forth in the Remedial Action Plan (defined below)
8 approved by the DTSC on December 16, 2005.

9 Plaintiffs and Soco West agree that the terms and conditions of the First
10 Decree have been fully complied with, and that DTSC has issued a "Statement of
11 Completion" confirming that no further action or work of any kind remains to be
12 conducted under the First Decree. However, as provided under the First Decree, the
13 Work to be completed thereunder did "not include the activities necessary for the
14 implementation of the Remedial Action Plan for the Site." The purpose of this
15 Second Decree is to implement the Remedial Action Plan prepared in accordance
16 with the First Decree, and to resolve all remaining claims and/or remaining portions
17 of claims, alleged or which could have been alleged in the Complaint.

18 Accordingly, this Second Decree resolves all remaining claims or portions
19 thereof not resolved in the First Decree. Because, since the time the Original
20 Complaint was filed, Holchem merged into Soco West, Inc., the Original Complaint
21 was amended to reflect these corporate changes. In the Complaint, as amended, the
22 Plaintiffs assert that: (1) Soco West is the "owner" and "operator" of the Site, as
23 those terms are defined under CERCLA and the HSAA; (2) that the Benjamin
24 Defendants are past "owners" and/or "operators" of the Site; and (3) that Soco West
25 is liable for the costs that have been, or will be, incurred in response to releases
26 and/or threatened releases of hazardous substances at and/or from the Site. Soco
27 West and the Benjamin Defendants are individually and collectively referred to
28 herein as the "Defendants."

1 This Second Decree resolves all outstanding claims and portions thereof
2 asserted in the Complaint, subject to certain reservations of rights, and requires Soco
3 West to do the following: (1) to implement the Remedial Action Plan approved by
4 DTSC for the Site; (2) to pay the Past Costs DTSC has incurred with respect to the
5 Site, as provided for under the First Decree; and (3) to pay DTSC's ongoing and
6 future Site costs, including oversight costs, in accordance with the terms of this
7 Decree.

8 Soco West does not admit (i) that it is a liable party under CERCLA, the
9 HSAA or any other state or federal law or (ii) that it has any liability to Plaintiffs or
10 to any other person for any of the matters addressed in this Decree or in the
11 Complaint. Soco West further contends that the work to be performed under this
12 Second Decree, or portions of such work, are or may be necessary because of the
13 acts or omissions of other persons or entities who are not parties to this Decree.
14 Plaintiffs and Soco West agree that the actions undertaken by Soco West in
15 accordance with this Decree, therefore, do not constitute an admission of liability on
16 the part of either Soco West and/or any of its predecessors in interest, or the
17 Benjamin Defendants. Soco West does not admit (1) any of the facts set forth in the
18 Statement of Facts contained in Section III of this Consent Decree (SITE
19 BACKGROUND), or (2) any other allegations of fact or law set forth in this Decree,
20 the First Decree and/or in the Complaint. Soco West reserves its rights to
21 controvert any such allegations in any subsequent proceeding (other than a
22 proceeding to implement or enforce the terms of this Decree).

23 This Second Decree is entered into by DTSC pursuant to its authority under
24 Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, 42 U.S.C. § 9621,
25 *et seq.*, Section 7003 of RCRA, 42 U.S.C. § 6973 and California Health & Safety
26 Code ("H&SC") §§ 25100 *et seq.*, 25187, 25355.5, 25358.3, 25360, 58009 and
27 58010.

28 ///

Pursuant to the aforementioned authority and pursuant to CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), Plaintiffs and Soco West each have stipulated and agreed to the making and entry of this Second Decree, prior to the taking of any testimony. Plaintiffs and Soco West agree that this settlement and entry of this Second Decree are made in good faith, in an effort to avoid expensive and protracted litigation and to benefit the environment and the community, without any admission or finding of liability or fault as to any allegation or matter.

NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

I. JURISDICTION

The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and CERCLA, 42 U.S.C. § 9601 *et seq.*, and supplemental jurisdiction over the claims arising under the laws of the State of California, pursuant to 28 U.S.C. § 1367. Solely for the purposes of this Second Decree and the underlying Complaint, Soco West waives service of summons and agrees to submit to the jurisdiction of this Court and to venue in this District. Soco West agrees not to challenge or object to entry of this Decree by the Court unless DTSC previously has notified Soco West in writing that DTSC no longer supports entry of this Decree or that DTSC seeks to modify this Decree. Plaintiffs and Soco West agree not to challenge this Court's jurisdiction to enforce the terms of this Decree once it has been entered.

II. PARTIES BOUND

A. The "Parties" to this Second Decree are Defendant Soco West, and Plaintiffs, DTSC, the California Hazardous Waste Control Account, the California Hazardous Substance Account, the Toxic Substances Control Account and the Site Remediation Account.

B. Soco West has agreed to pay the amounts specified under Section VIII of this Decree (PAYMENT OF DTSC COSTS) to undertake the Work and certain

1 other obligations as set forth in this Second Decree.

2 C. This Decree applies to and is binding upon the Plaintiffs and upon Soco
3 West and Soco West's predecessor corporations, including, without limitation,
4 Holchem, Inc., and Soco West's successors and assignees. Any change in
5 ownership, partnership status or corporate status of Soco West, including, but not
6 limited to, any transfer of assets or real or personal property, shall in no way alter
7 Soco West's rights or responsibilities under this Consent Decree.

8 D. Soco West shall be responsible and shall remain responsible for
9 carrying out all activities required of it under this Second Decree, and Soco West
10 shall remain obligated to carry out these activities notwithstanding any sale or
11 transfer of the Facility. In the event Soco West sells, leases or otherwise transfers
12 ownership or control of any portion of the Facility, Soco West shall secure the
13 transferee's full cooperation in carrying out Soco West's obligations under this
14 Decree.

15 E. Soco West shall be responsible for ensuring that its contractors and
16 subcontractors perform the Work contemplated herein in accordance with this
17 Second Decree. With regard to the activities undertaken pursuant to this Decree,
18 each contractor and subcontractor shall be deemed to be in a contractual relationship
19 with Soco West within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.
20 § 9607(b)(3).

21 F. All actions taken by Plaintiffs pursuant to this Decree, including all
22 approvals, reservations of rights, and covenants not to sue are solely those of DTSC
23 and the other Plaintiffs, and of no other agencies of the State of California or the
24 United States.

25 **III. SITE BACKGROUND**

26 The following is a summary of the Site background as alleged by Plaintiffs:

27 **A. The Facility.**

28 The facility that is the subject of this Decree is the land and fixtures and

1 equipment thereon located at 13540 and 13546 Desmond Street, Pacoima, County
2 of Los Angeles, California, 91331 ("Facility"). A legal description of the Facility is
3 attached hereto as Exhibit "A".

4 **B. The Owner/Operators.**

5 Mr. & Mrs. Benjamin and Chase Chemical. From 1967 until 1987, Mr. and
6 Mrs. Herman Benjamin and certain Benjamin Family Trusts (hereinafter the
7 "Benjamin Entities") owned and/or operated Chase Chemical Company, Inc.
8 ("Chase Chemical"), a distributor of chemical hazardous substances that did
9 business at the Facility. Plaintiffs have alleged, and the Benjamin Defendants have
10 denied, that during the time that the Benjamin Defendants owned and/or operated
11 the Facility, hazardous substances were released onto the soils there or were
12 released into the subsurface groundwater.

13 Holchem. Effective July 1, 1987, Holchem purchased certain assets of Chase
14 Chemical and leased the Facility premises from the Benjamin Entities. Holchem
15 operated the Facility from July 1, 1987 until 2001. Plaintiffs allege, and Soco West
16 denies, that during the time of Holchem's operator status, hazardous substances
17 were released onto the soils or into the subsurface groundwater at the Site.

18 Ownership Transfer to Holchem. In November, 1999, the Benjamin Entities
19 transferred ownership and title to the Facility premises to Holchem. Holchem
20 agreed to indemnify the Benjamin Defendants against future cleanup costs for the
21 Site in the document entitled "Settlement Agreement and Mutual General Release"
22 dated November 11, 1999.

23 Merger Activity - Soco West. The Facility premises are currently owned by
24 Soco West, through a merger of Holchem into Soco West in July, 2001.

25 **C. Physical Description of the Facility.**

26 The Facility occupies approximately two acres in an industrial/residential area
27 of Pacoima in Los Angeles County. There are two buildings located on the Facility
28 previously used for offices, packaging, and warehouse space. The Facility is

1 presently covered by asphalt and concrete. The Facility also houses eighteen
2 Aboveground Storage Tanks ("AGSTs"), a drum rinse area with a clarifier that was
3 used for pH control, two sumps that were used for run-off protection, and a drum
4 storage area. The Facility formerly had housed nineteen Underground chemical
5 Storage Tanks ("USTs"), which were replaced in December 1998 with two 21,000
6 gallon and one 20,000 gallon double wall, multi-component USTs, which are now
7 empty. Because Holchem was in the business of distributing chemical products,
8 certain chemicals that were classified as hazardous substances were stored in the
9 AGSTs, USTs and containers at the Facility. There are nine monitoring wells
10 ("MWs") on the Facility, one groundwater extraction well along with two
11 groundwater observation wells. In addition there are nine groundwater monitoring
12 wells that have been installed off of the Facility property. The entire perimeter of
13 the Facility is fenced.

14 **D. Facility History and Operations.**

15 During the period from 1967 to 1987, in which the Benjamin Entities owned
16 and operated Chase Chemical, a large quantity of various chemicals that were
17 classified as hazardous substances were stored at the Facility and sold to other
18 companies. After Holchem purchased certain assets of Chase Chemical in 1987, it
19 operated the Facility as a lessee of the Benjamin Entities. Some chemicals which
20 are classified as hazardous substances and listed on the Facility's Product Lists,
21 have been found in Facility soils and beneath the Facility in the underlying
22 groundwater.

23 **E. Soil Contamination.**

24 As a result of the past operations at the Facility, the soil at the Site has been
25 contaminated with various chemicals classified as hazardous substances, including,
26 but not limited to, Acetone, Methyl Ethyl Ketone (MEK), 4-Methyl 2-Pentanone
27 (MIBK), 2-Hexanone, Methylene Chloride, 1, 1, 1 Trichloroethane (TCA),
28 Trichloroethylene (TCE), 1, 1-Dichloroethane (1, 1-DCA), 1, 2-Dichloroethane

1 (1, 2-DCA), Tetrachloroethylene (PCE) and other hazardous substances and
2 contamination.

3 **F. Groundwater Contamination.**

4 The groundwater beneath the Site has been contaminated with various
5 chemicals classified as hazardous substances, including but not limited to, Acetone,
6 MEK, MIBK, 2-Hexanone, TCA, 1, 1, 2 Trichloroethane, TCE, 1, 1-DCA, 1, 2-
7 DCA, PCE, 1, 1-Dichloroethylene (1, 1-DCE), Cis-1, 2-Dichloroethene (Cis-1, 2-
8 DCE), 1,4-dioxane, Trans-1, 2-Dichloroethene (Trans-1, 2-DCE) and other
9 classified hazardous substances and contamination.

10 **G. Regulatory History.**

11 Prior to DTSC's involvement and since 1988, the Regional Water Quality
12 Control Board ("RWQCB") had been overseeing the Site and required that
13 semiannual groundwater monitoring be conducted by the Benjamin Entities. In
14 1996, the RWQCB referred the Site to the United States Environmental Protection
15 Agency ("U.S. EPA") for further evaluation. U.S. EPA then tasked DTSC to
16 conduct a Preliminary Endangerment Assessment/Site Inspection ("PEA/SI"),
17 through a Cooperative Agreement between the two agencies. While performing the
18 PEA/SI, DTSC and U.S. EPA determined that the Site would be better addressed as
19 a DTSC-lead site. In 1996, the Site was removed from the Cooperative Agreement
20 and thereupon became a DTSC-lead site, and U.S. EPA is not presently asserting
21 jurisdiction over the Site.

22 On April 21, 1997, DTSC issued an Imminent and Substantial Endangerment
23 Order ("I&SE Order") to Holchem and the Benjamin Defendants. While the
24 Benjamin Defendants initially took timely steps toward compliance with the I&SE
25 Order, Plaintiffs alleged that the Benjamin Defendants did not comply with the
26 I&SE Order, and DTSC consequently served them with a notice of noncompliance
27 with that Order. Holchem disputed any liability or responsibility under the I&SE
28 Order. On May 21, 1997, Holchem filed a Petition for Writ of Mandate and a

1 Complaint for a Preliminary and Permanent Injunction against DTSC in Los
2 Angeles County Superior Court, LASC Case No. BS045143, wherein Holchem
3 alleged, among other things, that Holchem was not provided an opportunity, as
4 required by law, to present its defenses to the I&SE Order and that Holchem was not
5 a responsible party for the contamination at issue. On or about August 21, 1997,
6 pursuant to a stipulation between Holchem and DTSC, LASC Case No. BS045143
7 was dismissed, without prejudice, pending the negotiation of a CERCLA Consent
8 Decree between DTSC, Holchem and the Benjamin Defendants. Such negotiations
9 led to the entry of the First Decree.

10 **H. The First Consent Decree.**

11 On April 25, 2000, this Court entered a Consent Decree ("First Decree") with
12 respect to the Site. The parties to the First Decree were Plaintiffs herein, Holchem,
13 the Holchem Related Parties, and the Benjamin Defendants. Soco West was not
14 identified as a party thereto, since, at the time the First Decree was entered,
15 Holchem had not yet merged into Soco West Inc., but did so thereafter, effective
16 July 2, 2001. The First Decree required the Defendants to, among other things, do
17 the following:

18 Holchem was required (1) to design and implement certain "removal"
19 action(s) necessary to minimize the spread of hazardous substances from the
20 Facility, such as installing, operating and maintaining a soil vapor extraction
21 and air sparging system; (2) to prepare and complete a Remedial
22 Investigation/Feasibility Study (RI/FS) for the site, consistent with USEPA's
23 "Guidance for Conducting Remedial Investigations and Feasibility Studies
24 under CERCLA," dated October 19, 1988 and "Data Quality Objectives for
25 Remedial Response Activities," dated March 1987, and any updated
26 Guidance documents in connection therewith. The purpose of the RI/FS was
27 to assess site conditions, to fully characterize the nature and extent of the
28 site's classified hazardous substance contamination, and to evaluate

1 alternatives to the extent necessary to select a remedy appropriate for the site;
2 (3) to prepare a Remedial Action Plan for the Site; (4) to assist the DTSC with
3 the preparation of any necessary California Environmental Quality Act
4 (CEQA) documentation for response actions to be performed at the site; and
5 (5) to pay certain costs that Plaintiffs had incurred or would incur with respect
6 to the Site.

7 The Benjamin Defendants were required to pay \$35,000 toward the
8 costs Plaintiffs incurred with respect to the Site.

9 The First Decree did not address implementation of the remedial work for the
10 Site to be implemented pursuant to the RAP. Instead, the parties specifically
11 contemplated that once the RAP was prepared and approved in accordance with the
12 First Decree, Holchem and DTSC would enter into negotiations toward a new
13 consent decree that would implement the remedy selected in the RAP. DTSC has
14 now issued a Statement of Competition that the work required pursuant to the First
15 Decree has been completed, and that no further action or work of any kind remains
16 to be conducted under the First Decree. Nothing in this Second Decree is intended
17 to in any way modify the COVENANTS NOT TO SUE as provided under
18 Section XI of the First Decree, the RESERVATION OF RIGHTS as provided under
19 Section XII of the First Decree, or the CONTRIBUTION PROTECTION provided
20 under Section XIII of the First Decree, nor is this Second Decree intended to in any
21 way alter any other of the terms or provisions of the First Decree.

22 **I. The RAP.**

23 On December 16, 2005, the Department approved the Final Remedial Action
24 Plan ("RAP") for the Site, dated December 6, 2005. The RAP generally provides
25 for a remedy consisting of institutional controls in the form of a covenant to restrict
26 use of the property ("Covenant for Environmental Restrictions"); continued
27 operation of the soil vapor extraction and air sparging systems; the design,
28 installation and implementation of a groundwater pump and treatment systems for

1 source removal and containment of contamination; and monitored natural
2 attenuation of the contaminants. Through this Decree, Soco West is agreeing to
3 implement the Site remedy as set forth in the DTSC approved RAP.

4 **J. Hazardous Substances.**

5 The contaminants found at the Site include chemicals classified as hazardous
6 substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and
7 H&SC §§ 25316 and 25317.

8 **K. Releases.**

9 There have been releases and threatened releases of hazardous substances at
10 the Site.

11 **L. Facility.**

12 The property located at 13540 and 13546 Desmond Street in Pacoima,
13 California is a "facility" as that term is defined by Section 101(9) of CERCLA, 42
14 U.S.C. § 9601(9).

15 **M. Person/Operator.**

16 Soco West is a "person," as that term is defined by Section 101(21) of
17 CERCLA, 42 U.S.C. § 9601(21) and H&SC § 25319, who is, and through its
18 corporate predecessors in interest, has been, (i) the owner and/or operator of the
19 Facility from which there has been a release or threatened release of hazardous
20 substances, (ii) the operator of the Facility at the time of a release and threatened
21 release of hazardous substances.

22 **IV. DEFINITIONS**

23 Unless otherwise expressly provided herein, terms used in this Consent
24 Decree that are defined in CERCLA, or in regulations promulgated under CERCLA,
25 shall have the meaning assigned to them therein. Whenever terms listed below are
26 used anywhere in this Decree or its exhibits, if any, the following definitions shall
27 apply:

28 1. "CERCLA" shall mean the Comprehensive Environmental

1 Response, Compensation, and Liability Act of 1980, as amended by the Superfund
2 Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613
3 (1986), 42 U.S.C. §§ 9601, et seq., as amended.

4 2. "Second Decree," "Consent Decree," or "Decree" shall mean this
5 Second Consent Decree and its attachments and exhibits.

6 3. "Contractor" shall mean the individual, company or companies
7 retained by or on behalf of Soco West, to undertake and complete the Work.

8 4. "Day" shall mean a calendar day unless expressly stated to be a
9 working day. In computing any period of time under this Decree, where the last day
10 would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run
11 until the close of business of the next working day.

12 5. "Facility" is defined at Section 101(9) of CERCLA, 42 U.S.C.
13 §9601(9), and for purposes of this Decree, shall mean that property and all fixtures
14 and equipment thereon, located at 13540 and 13546 Desmond Street, Pacoima,
15 California. A legal description of the Facility is attached as Exhibit "A" to this
16 Decree.

17 6. "Holchem Related Parties" shall mean all such parties as defined
18 in the First Decree, specifically, Holchem's present and former officers, directors,
19 shareholders, agents, employees, contractors, consultants, receivers, trustees,
20 successors and assignees, including but not limited to, individuals, partners, and
21 subsidiary, parent and affiliated corporations.

22 7. "National Contingency Plan" or "NCP" shall refer to the
23 National Oil and Hazardous Substances Pollution Contingency Plan promulgated
24 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R.
25 Part 300.

26 8. "Oversight" shall mean inspection, review, advice, direction and
27 comments performed or provided by DTSC, its contractors, or its representatives,
28 with respect to any of the following actions taken by Soco West or its agents

1 pursuant to this Decree: (1) any investigatory, removal or remedial activities;
2 (2) any plans, assessments or reports; and (3) the performance of the Work;
3 "Oversight" shall also include any actions, including but not limited to, sampling,
4 testing or analysis, taken by DTSC, its contractors or its representatives, that are
5 necessary to verify or ensure the adequacy of the Work or of any other activity
6 undertaken, or proposed to be undertaken by Soco West or its agents pursuant to this
7 Decree.

8 9. "Parties" shall mean Defendant, Soco West, and Plaintiffs,
9 DTSC and the State Accounts.

10 10. "Past Response Costs" shall mean all the costs and expenses,
11 including, but not limited to, interest, that DTSC has incurred on behalf of Plaintiffs
12 with regard to the Site, up until the Effective Date of this Consent Decree.

13 11. "Plan(s)" or "Workplan(s)" shall mean the plans and designs
14 developed by or on behalf of Soco West that detail the elements of the Work to be
15 conducted pursuant to this Consent Decree, and shall include, but not be limited to,
16 the RAP and the remedial design plans referenced in this Decree.

17 12. "RCRA" shall mean the Solid Waste Disposal Act, as amended,
18 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery
19 Act).

20 13. "Remedial Action Objective(s)" or "RAOs" shall mean those
21 Remedial Action Objectives as set forth in the RAP.

22 14. "Remedial Action Plan" or "RAP" shall mean that document
23 entitled "Final Remedial Action Plan Former Chase Chemical Site," dated
24 December 6, 2005, which document was submitted to, and was approved by the
25 DTSC on December 16, 2005.

26 15. "Report(s)" shall mean the reports developed by Soco West in
27 compliance with this Decree, detailing the Work and the results of its
28 implementation.

1 16. "Site" shall mean the vertical and areal extent of Waste Material
2 and any and all other contamination, located in, on, under, or migrating from, the
3 Facility located at 13540 and 13546 Desmond Street in Pacoima, California,
4 whether in soil, air, surface water or ground water. The Site shall be designated as
5 the "Former Chase Chemical Company Site."

6 17. "Soco West Related Parties" shall mean Soco West, and Soco
7 West's present and former officers, directors, shareholders, agents, employees,
8 contractors, consultants, receivers, trustees, attorneys, predecessors, successors, and
9 assigns, including, but not limited to individuals, partners, subsidiaries, and parent
10 and affiliated corporations.

11 18. "State Accounts" shall mean the California Hazardous Waste
12 Control Account, the California Hazardous Substances Account, the Toxic
13 Substances Control Account and the Site Remediation Account, to the extent they
14 expend funds with respect to the Site on behalf of DTSC.

15 19. "Waste Material" shall mean (1) any "hazardous substance" as
16 defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), that is in, on,
17 under or migrates or threatens to migrate, to any soil, air, surface water and/or
18 groundwater at the Site; (2) any "hazardous substance" as defined under California
19 H&SC §§ 25316 and 25317, that is in, or threatens to migrate to any air, soil,
20 surface water and/or groundwater at the Site; or (3) any "hazardous waste" as
21 defined under H&SC § 25117.

22 20. "Work" shall mean the implementation, in accordance with, and
23 from and after the Effective Date this Decree, of the tasks and activities defined
24 herein, including but not limited to: Section VI (GENERAL OBLIGATIONS
25 RESPECTING WORK TO BE PERFORMED); Section VII (SPECIFIC WORK
26 TO BE PERFORMED); and such Work as may be added or modified pursuant to
27 the provisions of this Decree; and any schedules or plans required to be submitted
28 pursuant to this Decree. The term "Work" includes all of the activities necessary for

1 the design and implementation of the RAP for the Site.

2 21. "Work Oversight Costs" shall mean all costs incurred by the
3 Plaintiffs in Oversight of the Work. Work Oversight Costs shall include: payroll
4 costs, overhead costs, contractor costs, laboratory costs, the costs incurred pursuant
5 to Subsection VI.J (Site Access), and the costs of reviewing or developing plans,
6 reports and other items pursuant to this Decree, verifying the Work, or costs
7 incurred to implement or enforce this Consent Decree, from and after the Effective
8 Date of this Decree. Work Oversight Costs do not include any costs incurred by
9 DTSC in oversight of activities that are beyond the scope of this Decree. Activities
10 that fall within the scope of this Decree include the Work and any other activities
11 necessary for the implementation of the RAP.

12 **V. GENERAL PROVISIONS**

13 **A. Purposes.**

14 The purposes of this Decree are:

15 **1. Work.**

16 To protect public health and welfare and the environment from releases or
17 threatened releases of Waste Material at or from the Site by the completion of the
18 following Work: Design and implementation of the RAP for the Site.

19 **2. Resolution of Claims.**

20 To fully and finally resolve all claims that the Plaintiffs have or could have
21 asserted against the Defendants in the Complaint in this matter.

22 **B. Compliance With Applicable Law.**

23 All activities undertaken by Soco West pursuant to this Consent Decree shall
24 be performed in accordance with the requirements of all applicable federal, state and
25 local laws and regulations, including the NCP. All parties agree that the Work, if
26 performed in accordance with the requirements of this Decree, is consistent with the
27 NCP.

28 ///

1 **C. No Findings By DTSC.**

2 This Decree in no way constitutes a finding by DTSC as to the risks to human
3 health or the environment that may be posed by contamination at the Site. This
4 Decree does not constitute a representation by DTSC that the Site, or any part
5 thereof, is fit for any particular purpose.

6 **VI. GENERAL OBLIGATIONS RESPECTING WORK TO BE**
7 **PERFORMED**

8 **A. Project Coordinator.**

9 Soco West identifies the following person as Project Coordinator for the
10 activities that are required under this Decree:

11 Name: Mr. Ralph J. Zimbardo, President, Soco West, Inc.

12 Address: 120 White Plains Road, Tarrytown, NY 10591

13 Telephone: (914) 366-7250

14 It shall be the responsibility of the Project Coordinator to receive all notices,
15 comments, approvals, and other communications from DTSC. Soco West shall
16 promptly notify DTSC of any change in the identity of the Project Coordinator.

17 **B. Communication and Coordination.**

18 Soco West shall communicate and coordinate with DTSC in accordance with
19 the Communication and Coordination Plan (CCP) currently in effect with respect to
20 the Site. In the future, Soco West shall amend the CCP if necessary, subject to
21 approval by DTSC.

22 **C. Project Engineer/Geologist.**

23 The Work performed pursuant to this Decree shall be under the direction and
24 supervision of the following professional engineer and/or registered geologist:

25 Name: Mr. Greg Fiol, Arcadis

26 Address: 1400 N. Harbor Blvd., Suite 700, Fullerton, CA. 92835

27 Telephone: (714) 278-0992

28 Soco West may replace the Project Engineer/Geologist subject to the following

1 conditions: The replacement Project Engineer/Geologist shall be a qualified
2 professional engineer or geologist registered in the State of California, who shall
3 have expertise in hazardous substance site cleanup including at least two CERCLA
4 RI/FS equivalent projects where remediation costs exceeded \$1,000,000. Within
5 forty-five (45) days prior to any such replacement, Soco West shall submit for
6 DTSC review and approval: (a) the name(s) and address(es) of the replacement
7 project engineer and/or geologist chosen by Soco West; and (b) in order to
8 demonstrate necessary expertise in hazardous substance cleanup, the resume(s) of
9 the engineer and/or geologist, and the statement of qualifications of the consulting
10 firm responsible for the work.

11 **D. Quarterly Summary Reports.**

12 Within ninety (90) days from the Effective Date of this Decree, and every
13 calendar quarter thereafter, Soco West shall submit a Quarterly Progress Report of
14 its activities under the provisions of this Decree. The report shall be received by
15 DTSC by the 30th of the month following the end of the quarter, and shall describe:

- 16 (1) Specific actions taken by or on behalf of Soco West during the
17 previous quarter;
- 18 (2) Actions expected to be undertaken during the current quarter;
- 19 (3) All planned activities for the next quarter;
- 20 (4) Any requirements under this Decree that were to have been
21 completed by such quarter, but were not completed;
- 22 (5) Any problems or anticipated problems in complying with this
23 Decree; and
- 24 (6) All results of sample analyses, tests, and other data generated
25 under this Decree during the previous quarter, and any
26 significant findings from these data.

27 DTSC may at any time, for good cause, instruct Soco West to submit such
28 reports on a monthly basis where the submission of monthly reports is necessary and

1 appropriate under the circumstances.

2 **E. Quality Control/Quality Assurance ("QC/QA").**

3 All sampling and analysis conducted by Soco West under this Decree shall be
4 performed in accordance with QC/QA procedures submitted by Soco West and
5 approved by DTSC pursuant to this Decree.

6 **F. Submittals.**

7 All submittals and notifications from Soco West required by this Decree shall
8 be sent to:

9 Sayareh Amir, Chief
10 Southern California Cleanup Operations Branch – Glendale Office
11 Department of Toxic Substances Control
12 Attention: Chase Chemical Project Manager
1011 N. Grandview Avenue
Glendale, California 90201

13 and to such other persons as are determined by DTSC.

14 **G. Communications.**

15 All approvals and decisions of DTSC made regarding submittals and
16 notifications will be communicated to Soco West in writing by the Site Mitigation
17 Cleanup Operations Branch Chief, Department of Toxic Substances Control, or
18 his/her designee. No informal advice, guidance, suggestions or comments by DTSC
19 regarding reports, plans, specifications, schedules or any other writings by Soco
20 West, shall relieve Soco West of the obligation to obtain such formal approvals as
21 may be required.

22 **H. DTSC Review and Approval.**

23 If DTSC determines that any report, plan, schedule or other document
24 submitted for its review and approval pursuant to this Decree fails to comply with
25 this Decree or fails to adequately protect public health or safety or the environment,
26 DTSC may:

27 (1) Modify the document as deemed necessary and return the
28 document, as modified, to Soco West, for Soco West's resubmission;

1 (2) Return written comments to Soco West, with recommended
2 changes and a reasonable date by which Soco West is to submit a revised document
3 incorporating the changes to DTSC. Upon receipt of the revised document, DTSC
4 may either (i) approve the document as revised, or (ii) modify the document as
5 reasonably necessary and approve the document as modified.

6 Soco West shall comply with any modifications, comments or other directives
7 issued pursuant to paragraphs (1) and (2) above, unless timely disputed by Soco
8 West in accordance with the dispute resolution provisions set forth in Section IX of
9 this Decree (Dispute Resolution).

10 **I. Compliance With Applicable Laws.**

11 Soco West shall carry out this Decree in compliance with all applicable state,
12 local, and federal requirements including, but not limited to, requirements to obtain
13 permits and to assure worker safety.

14 **J. Site Access.**

15 To the extent access to the Site, or laboratories used for analyses of samples
16 under this Decree, is within the control of Soco West, upon receipt of reasonable
17 notice requesting access, Soco West shall provide access at all reasonable times to
18 employees, contractors, and consultants of DTSC. DTSC shall notify all such
19 employees, contractors and consultants of the existence of the subject Waste
20 Materials at the Site, and that the Site had been used for the storage and distribution
21 of various chemicals, hazardous substances and hazardous materials. Accordingly,
22 DTSC employees, contractors and consultants entering the Site will comply with all
23 reasonable safety and security procedures, including those provided to them by Soco
24 West, or its consultants or contractors. Nothing in this Subsection is intended or
25 shall be construed to limit in any way the right of entry or inspection that DTSC or
26 any other agency may otherwise have by operation of any law. After providing
27 reasonable notice to Soco West, DTSC and its authorized representatives shall have
28 the authority to enter and move safely about all property at the Site, at all reasonable

1 times, for purposes of ensuring compliance with this Decree, including, but not
2 limited to: inspecting records, operating logs, sampling and analytic data, and
3 contracts relating to the Site; reviewing the progress of Soco West in carrying out
4 the terms of this Decree; conducting such tests as DTSC may deem necessary; and
5 verifying the data submitted to DTSC by Soco West.

6 **K. Sampling, Data and Document Availability.**

7 Soco West shall permit DTSC and its authorized representatives to inspect
8 and copy all sampling, testing, monitoring or other data generated by Soco West, or
9 on Soco West's behalf, pertaining to Work undertaken pursuant to this Decree that
10 is not privileged or protected in accordance with sections 25358.2 and 25511 of the
11 Health and Safety Code, except that Soco West shall produce protected documents
12 as provided for under said sections, which, upon receipt of such documents by
13 DTSC, will be treated as protected and confidential by DTSC in accordance with
14 said sections. Soco West shall submit all such data upon the request of DTSC.
15 Copies shall be provided within seven (7) days of receipt of DTSC's written request.
16 Soco West shall inform DTSC at least seven (7) days in advance of all field
17 sampling under this Decree, and shall allow DTSC, and its authorized
18 representatives, to take duplicates of any samples collected by Soco West pursuant
19 to this Decree. DTSC shall make its public records file of Site reports, workplans,
20 comments, technical information and all related information concerning the Site,
21 available to Soco West for its review and consideration, during normal business
22 hours, upon receiving reasonable notice from Soco West to review and/or copy the
23 same.

24 **L. Record Retention.**

25 All data, final reports and other documents prepared pursuant to this Decree
26 shall be preserved by Soco West for a minimum of six (6) years after the conclusion
27 of all activities under this Decree. If DTSC requests that some or all of these
28 documents be preserved for a longer period of time, Soco West shall either comply

1 with that request or deliver the documents to DTSC. Soco West shall notify DTSC
2 in writing at least two (2) months prior to destroying any documents prepared
3 pursuant to this Decree.

4 **M. Government Liabilities.**

5 The State of California shall not be liable for any injuries or damages to
6 persons or property resulting from acts or omissions of Soco West, or any of its
7 contractors, agents, successors or assigns in carrying out activities pursuant to this
8 Decree, nor shall the State of California be held to be a party to any contract entered
9 into by Soco West, or its agents, in carrying out activities under this Decree.

10 **N. Additional Actions.**

11 Except as expressly provided herein, by entering into this Decree, DTSC does
12 not waive the right to take any further actions authorized by law.

13 **O. Stop Work Order.**

14 In the event that DTSC determines that Soco West's conducting of any
15 activity (whether or not pursued in compliance with this Decree) may pose an
16 imminent or substantial endangerment to the health or safety of people on the Site,
17 or in the surrounding area or to the environment, DTSC may order Soco West to
18 stop further implementation of such activity for such period of time needed to abate
19 the endangerment (hereafter "Stop Work Order"). In the event DTSC determines
20 that any Site activities not pursued in compliance with this Decree, are proceeding
21 without DTSC authorization, DTSC may order Soco West to stop further
22 implementation of such Site activities for such period of time needed to obtain
23 DTSC authorization, if such authorization is appropriate. Any deadline in this
24 Decree directly affected by a Stop Work Order shall be extended for the term of the
25 Stop Work Order.

26 **P. Emergency Response Action/Notification.**

27 In the event of any emergency requiring emergency response, such as a fire,
28 earthquake or explosion, or other similar event causing or potentially causing an

1 unacceptable human exposure to Waste Materials, as a result of a release or
2 threatened release of Waste Materials at the Facility, during the course of this
3 Decree, Soco West shall immediately take all appropriate action to prevent, abate, or
4 minimize such emergency, release, or immediate threat of release and shall
5 immediately notify the Project Manager. Soco West shall take such action in
6 consultation with the Project Manager and in accordance with all applicable
7 provisions of this Decree. Within seven (7) days of the onset of such an event, Soco
8 West shall furnish a report to DTSC, signed by Soco West's Project Coordinator,
9 setting forth the events that occurred and the measures taken in the response thereto.
10 In the event that Soco West fails to take appropriate response action and DTSC
11 takes the action instead, DTSC may seek to recover the costs of its response action
12 from Soco West. Nothing in this Section shall be deemed to limit any other
13 notification requirement to which Soco West may otherwise be subject to by
14 operation of law.

15 **Q. Extension Requests.**

16 If Soco West is unable to perform any activity or submit any document within
17 the time required under this Decree, Soco West may request an extension of the time
18 in writing. The extension request shall include a justification for the delay. All such
19 requests shall be in advance of the date on which the activity or document is due.

20 **R. Extension Approvals.**

21 If DTSC determines that good cause exists for an extension, DTSC will grant
22 the request and specify a new schedule in writing. Soco West shall comply with the
23 new schedule established by DTSC.

24 **VII. SPECIFIC WORK TO BE PERFORMED**

25 **A. Activity Schedule.**

26 Not later than thirty (30) days from the Effective Date of this Consent Decree,
27 Soco West shall submit to DTSC, for its review and approval, a schedule that
28 provides specific time frames and dates for completion of each activity and each

1 report required by this Decree.

2 **B. Public Participation Plan ("PPP").**

3 Soco West shall continue to implement the current Public Participation Plan
4 ("PPP"), in order to keep the public and the adjoining community informed
5 respecting Site activities. Necessary changes to the PPP must be developed in
6 accordance with DTSC's Public Participation Policy and Guidance Manual, July
7 1994, as updated February 1997, and must be approved by DTSC.

8 **C. Health and Safety Plan.**

9 Soco West shall implement the existing Health and Safety Plan ("H&SP"),
10 with amendments, after DTSC approves the Remedial Design Plan (defined below)
11 provided to DTSC of the design of the Work necessary to implement the RAP. The
12 amendments to the current H&SP shall be prepared in accordance with federal (29
13 CFR Section 1910.120) and state (Title 8, CCR Section 5192) regulations
14 addressing the implementation activities, including construction site safety. The
15 amended H&SP shall be submitted to DTSC, for its review and approval, within
16 sixty (60) days after DTSC's approval of the Remedial Design Plan (defined below).

17 **D. Sampling and Analysis Plan and Quality Assurance Project Plan.**

18 Within thirty (30) days of the Effective Date, Soco West shall submit, for
19 DTSC's review and approval, an amended Sampling and Analysis Plan ("SAP") for
20 field and laboratory analysis activities. The SAP will address sampling and tests
21 conducted during RAP implementation. The Quality Assurance Project Plan
22 ("QAPP") will be amended and submitted to DTSC, for DTSC's review and
23 approval, with the SAP, and will address the quality assurance and quality control
24 measures to be employed during implementation of the RAP.

25 **E. Continuation of Removal Systems.**

26 To the extent provided for under the RAP, Soco West shall continue to
27 operate and maintain the following Removal Actions installed pursuant to
28 Section XII.B (Removal Actions) of the First Decree, except that DTSC may

1 provide Soco West written approval to terminate any one or more of such Removal
 2 Actions because (i) the applicable Remedial Action Objective, as described in the
 3 RAP, has been achieved, or (ii) such Removal Actions are no longer necessary to
 4 implement the RAP, or have been superceded by other measures implemented or to
 5 be implemented pursuant to the RAP:

- 6 1. The Site perimeter fencing and warning signs.
- 7 2. Groundwater monitoring of the existing groundwater monitoring
 8 wells.
- 9 3. The soil vapor extraction system.
- 10 4. The air sparging system.

11 **F. Remedial Design and Implementation.**

12 **1. Remedial Design.**

13 Within sixty (60) days after the Effective Date, Soco West shall submit a
 14 draft Remedial Design Plan (Draft RD) for the Site. The Draft RD shall include
 15 drawings, specifications, and detailed plans and timetables for implementing and
 16 monitoring the implementation of each aspect of the remedy described in the RAP,
 17 as well as, if appropriate, the implementation of a pilot study(ies) (hereinafter "RD
 18 Implementation"), as needed to assist in the development of any remedial
 19 technology or system described in the RAP. Included with the draft RD shall be a
 20 draft of the Covenant for Environmental Restrictions that is to be a part of the
 21 remedy set forth in the RAP. DTSC shall comment on the draft RD, and within
 22 thirty (30) days after receipt of such comments from DTSC, Soco West will submit,
 23 for DTSC's review and approval, a final Remedial Design Plan ("Remedial Design
 24 Plan") which incorporates DTSC's comments, except that Soco West retains its
 25 rights to challenge the inclusion of such comments through the Dispute Resolution
 26 Process (Section IX of this Decree).

27 **2. Remedial Implementation.**

28 Not later than thirty (30) days following DTSC's approval of the Remedial

1 Design Plan, Soco West shall commence implementation of the RAP for the Site,
2 consistent with the terms of the approved Remedial Design Plan. Soco West shall
3 proceed to implement the RAP for the Site until such time as DTSC determines that
4 such RAOs have been achieved, and, has issued the Statement of Completion, as
5 provided under Section X (SATISFACTION AND CERTIFICATION) of this
6 Decree.

7 **3. Continued Implementation of Remedy.**

8 The remedial technology or systems employed in implementation of the RAP
9 shall continue to be operated by Soco West until: (i) DTSC confirms in writing, the
10 RAOs have been achieved; (ii) DTSC specifically authorizes Soco West, in writing,
11 to discontinue, move or modify some or all of the specific remedial technology or
12 systems; (iii) DTSC approves, in writing, an alternative remedial technology or
13 system, which DTSC allows to be used in place of, and/or in addition to, all or any
14 portion of any remedial technology or systems described in the RAP or in the
15 Remedial Design Plan; or (iv) DTSC has issued the Statement of Completion as
16 provided for under Section X (SATISFACTION AND CERTIFICATION) of this
17 Decree.

18 **G. Quarterly Reports.**

19 Included with the Quarterly Progress Reports submitted to DTSC pursuant to
20 Subsection VI (Quarterly Summary Reports), Soco West shall provide DTSC with
21 quarterly reports of the analytical results generated by each of the remedial
22 technologies or systems implemented under the RAP. If DTSC determines that
23 conditions warrant, DTSC may instruct Soco West to submit these reports on a more
24 or less frequent basis.

25 **H. Data Gaps.**

26 In the event DTSC identifies any material data gaps regarding Site
27 characterization, Soco West shall submit a technical memorandum for DTSC's
28 review and approval, addressing the need for additional data. If DTSC thereafter

1 reasonably concludes that additional data is necessary because of material data gaps
2 in existing data, Soco West shall obtain and evaluate the necessary additional data.

3 **I. Remedy Effectiveness Review.**

4 In order for DTSC to assess remedy effectiveness, Soco West shall submit a
5 Remedy Review Report ("RRR") five (5) years after the Effective Date, and every
6 five (5) years thereafter, until the Statement of Completion, as provided under
7 Section X (SATISFACTION AND CERTIFICATION) of this Decree, has been
8 provided. The five-year interval may be modified if DTSC reasonably determines
9 that more or less frequent Remedy Review Reports are warranted. The Remedy
10 Review shall be conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C.
11 Section 9601 et seq., as amended by the Superfund Amendments and
12 Reauthorization Act (SARA) of 1986, to determine if human health and the
13 environment are being protected, as well as to consider the appropriateness of new
14 and/or alternative remedial technologies or systems to be used, in place of, or in
15 addition to, the remedial technologies or systems being implemented. The RRR
16 shall describe the results of significant sample analyses, tests and other data
17 generated or received by Soco West pursuant to this Decree, and shall evaluate the
18 adequacy of the implemented remedy in protecting public health, safety and the
19 environment. The requirements of the RRR are separate and independent from any
20 inspection and reporting requirements contained in any Covenant for Environmental
21 Restrictions provided for under the RAP.

22 **J. Changes During Remedial Design Implementation.**

23 During RD Implementation, DTSC may specify reasonable additions,
24 modifications or revisions to the Remedial Design Plan that are consistent with the
25 NCP, if said additions, modifications or revisions are necessary to achieve the RAOs
26 specified in the RAP. Soco West shall resubmit any plans, modifications or
27 revisions to the Remedial Design Plans within a reasonable time from the date of
28 DTSC's notification of modification or other change, but retains its rights to

1 challenge the inclusion of such modifications and revisions through the Dispute
2 Resolution Process (Section IX of this Decree). During RD Implementation, Soco
3 West may propose reasonable additions, modifications or revisions to Work
4 activities under this Decree, that are consistent with the NCP, including changes to
5 the RAP or the Remedial Design Plan. These proposed additions, modifications or
6 revisions by either DTSC or Soco West, may include alternative remedial
7 technologies or systems, including in-situ remediation and bioventing, and new or
8 alternative methods of remediation that may substitute in place of, or be used in
9 addition to, the remedial technologies or systems identified in the RAP or in the
10 Remedial Design Plan. Soco West may request such proposed additions,
11 modifications, or revisions through the submission of technical memoranda and
12 supporting documents to DTSC, which memoranda are to identify the data and
13 explain the rationale supporting the proposed addition(s), modifications(s) and/or
14 revisions(s). DTSC shall review and provide a written response to, and/or approval
15 or disapproval of, the technical memoranda submitted by Soco West, whereby upon
16 approval of any such technical memoranda, the RAP and/or the Remedial Design
17 Plan, as the case may be, shall be deemed revised as provided for in the technical
18 memoranda, along with the Work therefore to be conducted.

19 **VIII. PAYMENT OF DTSC COSTS**

20 **A. Past Response Costs.**

21 Pursuant to the terms of the First Decree, Soco West shall remain obligated to
22 pay, and shall pay, DTSC's Past Costs incurred in accordance with the First Decree,
23 up to and until the later of the Effective Date of this Decree, or the issuance of the
24 Statement of Completion of the First Decree, except that Soco West shall retain all
25 rights to object to and challenge all such DTSC Past Costs in accordance with and
26 pursuant to the terms of the First Decree. The amount of these Past Costs shall be
27 calculated and payment shall be made in accordance with the terms of the First
28 Decree.

1 **B. Work Oversight Costs.**

2 DTSC will provide Soco West with an accounting of all Work Oversight
3 Costs and shall provide quarterly bills for those Work Oversight Costs incurred in a
4 manner not inconsistent with the NCP. In billing and/or seeking to recover any and
5 all Work Oversight Costs under this Decree, DTSC shall comply with the
6 requirements of State law, specifically including, but not limited to, the
7 requirements of California Health & Safety Code section 25269 et seq., and shall
8 afford Soco West all rights and due process as provided under State law.

9 Soco West shall provide notice of any challenge to the quarterly bill for Work
10 Oversight Costs, by letter mailed to DTSC within sixty (60) days of Soco West's
11 receipt of the quarterly bill. The challenge will then be subject to the dispute
12 resolution provisions of this Decree.

13 Unless challenged by Soco West as permitted by this Decree, Soco West shall
14 pay the Work Oversight Costs by check within sixty (60) days after receipt of the
15 quarterly bill. The check shall be payable to the California Department of Toxic
16 Substances Control, and shall reference "Former Chase Chemical Site - Project
17 No. 300593." The check shall be sent to:

18 California Department of Toxic Substances Control
19 Attention: Accounting Unit
20 Former Chase Chemical Site, Project No. 300593
 P.O. Box 806
 Sacramento, California 95812-0806

21 A copy of the transmittal letter and a copy of the check shall be sent to the
22 Project Coordinator and DTSC's Project Manager at the address specified in
23 Subsection VI.F (Submittals).

24 **IX. DISPUTE RESOLUTION**

25 **A. Informal Dispute Resolution.**

26 Should Soco West object to any DTSC decision, action or inaction under this
27 Decree, Soco West shall notify DTSC of its objections, in writing, within thirty (30)
28 days after receipt of any such decision or action, or within thirty (30) days of receipt

1 of notice of any DTSC inaction. (All such decisions, actions or inactions are
 2 hereafter collectively referred to as "DTSC Decisions." For purposes of this
 3 Subsection, DTSC decisions do not include deadlines for submissions of documents
 4 pursuant to this Decree.) Should Soco West disagree with any item of Work
 5 Oversight Costs, Soco West shall notify DTSC of its objections within sixty (60)
 6 days of receipt of the quarterly bill. Within thirty (30) days from submission of such
 7 written objections, DTSC and Soco West shall meet and confer in an attempt to
 8 reach agreement on the DTSC Decision. At the end of this meet and confer period,
 9 or any time after meeting or conferring with Soco West, DTSC shall provide a
 10 written statement of its decision to Soco West, which written statement shall be
 11 considered the Final Decision of DTSC on the issue ("Final Decision"), unless Soco
 12 West seeks review under the Formal Dispute Resolution procedures, where such
 13 procedures apply. However, nothing in this Subsection should be construed as
 14 altering or limiting Soco West's legal rights to
 15 challenge any DTSC Decision or Final Decision, to the extent that such a challenge
 16 is permitted under State or federal law.

17 **B. Formal Dispute Resolution.**

18 **1. Limitations.**

19 Formal dispute resolution under this Section, including any dispute regarding
 20 any final document, is exclusively limited to disputes regarding the provisions
 21 described in Subsections VI.H (DTSC Review and Approval); VI.O (Stop Work
 22 Order); and Sections VII (SPECIFIC WORK TO BE PERFORMED); VIII
 23 (PAYMENT OF DTSC COSTS); X (SATISFACTION AND CERTIFICATION);
 24 and XIV (FORCE MAJEURE). Formal dispute resolution shall proceed as
 25 described in the following Subsection IX.B.2.

26 **2. Further Challenge by Soco West.**

27 If Soco West disagrees with any Final Decision concerning any issue within
 28 the scope of Subsection IX.B.1, within thirty (30) days after receipt of the Final

1 Decision, Soco West may appeal such Final Decision (hereafter "Challenge") to the
2 Deputy Director of Site Mitigation, Department of Toxic Substances Control (the
3 "Arbiter") or, in the Deputy Director's extended absence, to the Deputy Director's
4 designee. Within forty-five (45) days of receipt of any Challenge, the Arbiter shall
5 receive written evidence and testimony concerning the Final Decision, and shall
6 determine whether such Final Decision is reasonably necessary or appropriate in
7 light of the overall objectives of this Decree. The Arbiter shall issue a written
8 decision affirming the action of DTSC, setting aside the Final Decision of DTSC, or
9 amending the Final Decision of DTSC, as appropriate. The Arbiter's written
10 decision shall set forth the reasons for the ruling, and shall be rendered in
11 accordance with all applicable state and federal laws. The Arbiter's decision shall
12 be the Administrative Decision of the DTSC ("Administrative Decision"), and shall
13 become binding unless Soco West seeks review by this Court as provided in the
14 following paragraph.

15 **3. Review by This Court.**

16 Any Administrative Decision as described above, shall be reviewable by this
17 Court, provided that Soco West files a "Notice of Appeal of DTSC Administrative
18 Decision" with the Court and serves it on DTSC, within thirty (30) days of receipt of
19 the Administrative Decision. DTSC and Soco West may extend the thirty (30) day
20 time period within which a Notice of Appeal of DTSC Administrative Decision is to
21 be filed with the Court. Judicial review shall be limited to the administrative record
22 as a whole. The Notice of Appeal of the DTSC Administrative Decision shall
23 include: (i) a description of the matter in dispute, (ii) the efforts made by the parties
24 thereto to resolve it, and (iii) the relief requested. Within thirty (30) days of DTSC's
25 receipt of such Notice of Appeal of DTSC Administrative Decision, or within any
26 other schedule set forth by the Court, DTSC may file a response to said Notice.
27 Unless use of some other standard of review is required by law for the disputed
28 matter that is before the Court, Soco West will have the burden of proving, based on

1 the weight of the evidence in the administrative record, as a whole (1) that the
2 Administrative Decision was not supported by the weight of the evidence in the
3 administrative record, was arbitrary or capricious, or was otherwise not consistent
4 with State or federal law, or (2) when the Administrative Decision involves DTSC's
5 Work Oversight Costs, that the costs incurred by DTSC were not consistent with the
6 NCP or this Consent Decree, or were otherwise not in accordance with State or
7 federal law.

8 **C. Soco West's Work Obligations During Dispute Resolution.**

9 Notwithstanding the invocation of the procedures stated in this Section, Soco
10 West shall continue to perform its undisputed obligations under this Second Decree,
11 including those that are not materially affected by the disputed issue(s). For all
12 disputed obligations, and those materially affected by the disputed obligations, such
13 obligations are to be suspended pending a conclusion of the Formal Dispute
14 Resolution process under this section, and Soco West shall not be considered in
15 violation of this Decree for failing to comply with the disputed obligations and those
16 materially affected by the same, while either the Informal or Formal Dispute
17 Resolution procedures are pending.

18 **D. Obligations After Resolution of Dispute.**

19 If the Court decides in DTSC's favor on any Administrative Decision, or
20 portion thereof, then, unless Soco West's obligations are stayed by an order of this
21 Court, Soco West shall fulfill its obligation to pay costs or implement the disputed
22 matter resolved against it, and perform the work which was the subject of the
23 dispute in accordance with the Court's decision. The appropriate plans should be
24 amended to reflect the resolution of the dispute. If the Court finds in Soco West's
25 favor, then, unless a stay is issued by this Court, DTSC will comply with the Court's
26 decision, and Soco West need only comply with the disputed Administrative
27 Decision as finally determined by the Court. On any Administrative Decision or
28 portion thereof, the deadlines for any affected deliverables shall be extended to

1 account for any delays attributable to the Dispute Resolution procedures, and such
2 affected deliverables shall be modified so as to be consistent with the Court's
3 decision.

4 **X. SATISFACTION AND CERTIFICATION**

5 If Soco West fulfills its obligations by performing the activities required
6 under this Decree, i.e., the design and implementation of the remedies under the
7 RAP so that the RAOs specified therein have been attained, Soco West's obligations
8 for the Work required under this Decree shall be deemed to be fully satisfied and
9 completed. Within sixty (60) days after DTSC determines Soco West has fulfilled
10 its obligations under this Decree, DTSC shall issue to Soco West a written statement
11 that all Work and all obligations required of Soco West pursuant to this Decree,
12 have been fully and finally completed (Statement of Completion), and that no
13 further action or environmental investigation, assessment, monitoring, treatment,
14 removal or remedial or cleanup work of any kind or nature is or will be required for
15 the Site, except as may be permitted by Sections XI.C (LIMITATIONS ON
16 COVENANTS NOT TO SUE) and Section XII (RESERVATION OF RIGHTS).
17 Soco West, the Soco West Related Parties, Holchem, the Holchem Related Parties,
18 and the Benjamin Defendants shall be protected by the Covenants Not To Sue in
19 Section XI (COVENANTS NOT TO SUE), and from all claims for contribution as
20 provided by Section XIII (CONTRIBUTION PROTECTION), starting from the
21 Effective Date of this Second Decree, and continuing for so long as Soco West is in
22 substantial compliance with the terms of this Decree, which protections shall
23 become permanently binding thereafter following the issuance of the Statement of
24 Completion.

25 **XI. COVENANTS NOT TO SUE**

26 **A. Covenants Not to Sue for Site Remediation Activities and Costs.**

27 In consideration of the actions that will be performed and the payments that
28 will be made by Soco West under the terms of this Decree, and except as

1 specifically provided for in this Section, DTSC and the State Accounts covenant not
 2 to sue or to take any administrative action against Soco West, the Soco West
 3 Related Parties, Holchem, the Holchem Related Parties, and/or the Benjamin
 4 Defendants, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606
 5 and 9607, Sections 3008(h), 3013 or 7003 of RCRA, ^{42 (CERCLA)} ~~43~~ U.S.C. §§ 6928(b), 6934 or
 6 6973, or H&SC §§ 25100, *et seq.*, 25300, *et seq.*, or any other federal or state
 7 statute, regulation, or common law concerning or relating to: (1) the Site, (2) the
 8 Work, (3) Past Response Costs, (4) Work Oversight Costs, (5) declaratory relief,
 9 and (6) civil penalties or injunctive relief, all to the extent that they concern or in
 10 any way relate to releases or threatened releases of Waste Materials or any other
 11 contamination, in, on, under, or in any way migrating to or from the Site. This
 12 covenant also includes the passive migration of Waste Materials or other
 13 contamination in, on, under, or from the Site.

14 **B. Covenants Immediately Effective**

15 All Plaintiffs' covenants not to sue are conditioned upon the substantial
 16 compliance by Soco West with all of its obligations under this Decree, but shall take
 17 effect on the Effective Date of this Decree, and shall continue so long as Soco West
 18 substantially complies with the terms of this Decree. These covenants not to sue
 19 shall become permanently binding to the benefit of all of the parties identified in this
 20 Section, upon the issuance of the Statement of Completion described in Section X
 21 (SATISFACTION AND CERTIFICATION).

22 **C. Limitations on Covenants Not to Sue**

23 Soco West, the Soco West Related Parties, Holchem and the Holchem
 24 Related Parties are not released from any matter not addressed by this Consent
 25 Decree, and they are not released from the following claims:

- 26 1. Any claim based on a failure by Soco West to meet the
- 27 obligations of this Decree;

28 ///

2. Claims based on the liability for arising from the past, present or future disposal of Waste Materials at disposal sites other than the Site.

3. Claims based on criminal liability; at present, however, Plaintiffs have no pending criminal claim or investigation against any of the parties identified in this Section.

4. Claims based on liability for Waste Materials removed from the Site.

5. Liability for any violations of federal or state law which occur during implementation of the Work.

6. Rights reserved by the DTSC and the State Accounts in Section XII (RESERVATION OF RIGHTS).

D. Claims Against Other Persons and Entities

Nothing in this Consent Decree shall constitute or be construed as a release or covenant not to sue regarding any claim or cause of action against any "person" as defined in Section 101(21) of CERCLA or H&SC § 25319, other than DTSC, the State Accounts, Soco West, the Soco West Related Parties, Holchem, the Holchem Related Parties, and the Benjamin Defendants, for any liability they may have arising out of or relating to the Site.

E. Other Rights Reserved By All Parties

Except as otherwise provided in this Decree, Plaintiffs and Soco West expressly reserve all rights and defenses that they have or may have. Nothing in this Decree shall be deemed to limit the response authority of the Plaintiffs under H&SC § 25358.3 or under any other response authority, except to the extent of the covenants not to sue under this Section.

F. Soco West's Covenant Not to Sue

Except as otherwise permitted under the First Decree or this Second Decree, Soco West hereby covenants not to sue Plaintiffs, and agrees not to assert any claims or causes of action against Plaintiffs, arising out of any prior acts or

1 omissions or oversight activities of Plaintiffs, with respect to the Site, including but
2 not limited to:

3 1. Any direct or indirect claim for reimbursement from the
4 Hazardous Waste Control Account, Hazardous Substance Account, the Site
5 Remediation Account or the Hazardous Substance Cleanup Fund, or any
6 successor fund through H&SC Section 25375 or any other provision of law.

7 2. Any claims against the Plaintiffs under CERCLA §§ 107 or 113
8 for any prior acts, oversight activities or alleged omissions by DTSC related
9 to the Site.

10 3. Any claims against the Plaintiffs arising out of prior response
11 activities, or prior oversight activities or omissions by DTSC at the Site,
12 including but not limited to nuisance, trespass, takings or equitable indemnity
13 and indemnity under California law, contribution under California or federal
14 law, and negligence or strict liability under California or federal law.

15 Nothing in this Decree shall be construed to limit, impair, or prejudice any
16 tort or governmental immunities available to Plaintiffs under any applicable law,
17 arising out of its oversight activities at the Site or under this Decree.

18 **XII. RESERVATIONS OF RIGHTS**

19 **A. Obligations Under this Decree**

20 Except as otherwise provided in this Decree, Soco West expressly reserves
21 any and all rights, including, but not limited to, rights of contribution or
22 indemnification, for all costs, losses, liabilities and damages incurred by Soco West
23 in connection with the Site, or for complying with the requirements of this Decree.

24 In the event DTSC initiates any legal proceedings against Soco West for non-
25 compliance with this Decree, Soco West shall not contest the validity of this Decree;
26 Soco West, however, expressly reserves all other rights and defenses with respect to
27 any such proceeding or any other cause of action or proceeding, including all rights
28 provided to it under this Decree.

1 **B. Claims Regarding Other Sites**

2 Nothing in this Decree is intended or shall be construed to limit the rights of
3 Plaintiffs or Defendants with respect to claims arising out of or relating to the
4 deposit, release or disposal of hazardous substances at any location other than the
5 Site subject to this Decree. This Subsection XII.B, however, shall not limit the
6 covenants not to sue and releases provided in this Decree, that apply to claims
7 arising from the spread or passive migration of Waste Materials, or other
8 contamination, to, in, on, under, or from the Site.

9 **C. Claims Against Other Persons and Entities**

10 DTSC retains all of its legal and equitable rights against all persons, except as
11 otherwise provided in this Decree. The legal and equitable rights retained by DTSC
12 include, but are not limited to, the right to compel any person, other than Soco West,
13 the Soco West Related Parties, Holchem, the Holchem Related Parties, or the
14 Benjamin Defendants, to take response actions for hazardous substance
15 contamination at the Site and to seek reimbursement against such persons for any
16 past, present or future costs incurred by DTSC with respect to the Site.

17 **D. Reservation of Claims**

18 Notwithstanding any other provision of this Decree, Plaintiffs reserve the
19 right to assert, and any covenants not to sue in this Decree shall not apply with
20 respect to, any claims or causes of action against Soco West, either administrative or
21 judicial, arising from any of the following:

22 1. Claims based on the failure of Soco West to meet a requirement
23 of this Decree.

24 2. The introduction of any new or additional hazardous substance,
25 pollutant, or contaminant to the Site in the future, other than any Waste Materials or
26 other contamination presently existing in, on, under, or migrating to or from the
27 Site;

28 ///

- 1 3. Willful interference with the remediation of the Site;
2 4. Future transportation and disposal of hazardous substances from
3 the Site;
4 5. Willful misconduct by Soco West that exacerbates any Waste
5 Material at the Site, including, but not limited to, the exacerbation of Waste
6 Materials existing at the Site as of the Effective Date of this Decree.

7 **E. Other Rights Reserved**

8 Soco West hereby waives any defenses of *res judicata*, collateral
9 estoppel, equitable estoppel, laches and claim-splitting based on the existence of this
10 Decree or the First Decree, with respect to DTSC's rights to pursue subsequent
11 litigation to compel Soco West to comply with this Decree or to take additional
12 actions to the extent permitted in the following Subsection XII.F (ADDITIONAL
13 RESPONSE ACTIONS).

14 **F. Additional Response Actions.**

15 Notwithstanding any other provision of this Decree, the Plaintiffs reserve,
16 and this Decree is without prejudice to, the right to institute proceedings in this
17 action or in a new action, or to issue an administrative order seeking to compel
18 Soco West or the Soco West Related Parties to (1) perform further response actions
19 relating to the Site, or (2) reimburse the Department Plaintiffs for additional
20 Response Costs related to the Site, if, at any time, the following occurs: Conditions
21 at the Site unknown to DTSC as of the Effective Date of this Decree, are
22 discovered, or information unknown to DTSC as of the Effective Date of this
23 Decree, is received, and these previously unknown conditions or information, either
24 by themselves or together with any other relevant information, indicate that the
25 remedy set forth in the RAP is not protective of human health and the environment.

26 For purposes of this section, the information and the conditions known to
27 DTSC shall include all information and conditions set forth in (i) all submittals to
28 DTSC, and all responses to such submittals by DTSC under the First Decree,

1 including but not limited to, all information and conditions that concern or relate to
2 the Remedial Investigation, the Feasibility Study, the Baseline Risk Assessment, the
3 Public Health Evaluation, and the RAP; (ii) all information and conditions presently
4 or previously referenced in DTSC's files that concern the Site, the Facility, or any
5 nearby sites or facilities; (iii) the entire administrative record concerning the RAP,
6 and all prior approvals and/or decisions leading up to the submission of the RAP;
7 and (iv) any other written information or referenced conditions, received by DTSC
8 prior to the Effective Date of this Decree, that concern, or in any way relate to the
9 Site, the Facility or any Waste Materials or other pollutants or contamination
10 existing in, on, under, or migrating to or from the Site.

11 **XIII. CONTRIBUTION PROTECTION**

12 With regard to any claims for contribution, equitable indemnity, declaratory
13 relief or apportionment of fault, against Soco West, the Soco West Related Parties,
14 Holchem, the Holchem Related Parties, and the Benjamin Defendants, for matters
15 addressed in this Decree, the Parties agree, and the Courts finds as follows:

16 A. This Decree constitutes a judicially approved settlement within the
17 meaning of CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2).

18 B. This Decree requires that Soco West pay certain costs and undertake
19 certain response actions at the Site. Accordingly, upon substantial compliance with
20 the obligations imposed upon Soco West by this Decree, the parties described above
21 will have resolved any liability to DTSC and the State Accounts, for all matters as
22 described in Section XI (COVENANTS NOT TO SUE) of this Decree, and all
23 matters as described in Section XI (COVENANTS NOT TO SUE) under the First
24 Decree.

25 C. Soco West, the Soco West Related Parties, Holchem, the Holchem
26 Related Parties, and the Benjamin Defendants are entitled to the Contribution
27 Protection provided by CERCLA § 113(f)(2), 42. U.S.C. Section 9613(f)(2), and as
28 provided by State law, for all "matters addressed" in this Consent Decree, as defined

1 below.

2 D. The "matters addressed" in this Consent Decree, subject to
3 Subsection XI.C and Section XII of this Decree, include (1) the Work under this
4 Decree and under the First Decree; (2) Past Response Costs under this Decree and
5 under the First Decree; (3) Work Oversight Costs as defined under this Decree and
6 under the First Decree; (4) any costs or expenses of any kind or nature, incurred or
7 to be incurred by any person with respect to the Work under this Decree or under the
8 First Decree, or with respect to any related Past Response Costs and/or Work
9 Oversight Costs; (5) any response costs or other costs, fees and/or any expenses of
10 any kind or nature, incurred or to be incurred by any person, prior to, during or after
11 the time that Soco West is completing or has completed the Work in substantial
12 compliance with this Decree, with respect to any Waste Materials or other pollutants
13 or contamination, of whatever kind or nature, in, on, under, or migrating from the
14 Site, whether in soil, air, water, or any other media; and (6) any response, removal
15 and/or remedial actions performed or to be performed at the Site, prior to and/or
16 after the Effective Date of this Decree, that concern or in any way relate to the
17 existence, release or threatened release of Waste Materials or other pollutants or
18 contamination, of whatever kind or nature, in, on, under or migrating from the Site.

19 E. Except as otherwise expressly provided herein, nothing in this Section
20 shall limit the Plaintiffs' rights against any third person or entity that is not a party to
21 this Decree, including, without limitation, DTSC's right to enforce a cleanup of the
22 Site and to recover any response costs associated with that cleanup.

23 F. In the event that the contribution protection afforded by this Section
24 XIII (CONTRIBUTION PROTECTION) is challenged in a judicial or
25 administrative action, the DTSC agrees to provide briefing and argument in support
26 of the contribution protection that is provided by this Section.

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1 **XIV. FORCE MAJEURE**

2 Soco West shall cause all Work to be performed within the time limits set
3 forth in this Decree unless an extension is approved or performance is delayed by
4 events that constitute an event of force majeure. For purposes of this Decree, an
5 event of force majeure is an event arising from circumstances beyond the control of
6 Soco West that delays performance of any obligation under this Decree, provided
7 that Soco West has undertaken all appropriate planning and prevention measures to
8 avoid any foreseeable circumstances. Increases in cost of performing the Work
9 specified in this Decree shall not be considered circumstances beyond the control of
10 Soco West. For purposes of this Decree, events which constitute a force majeure
11 shall include, without limitation, events such as acts of God, war, civil commotion,
12 unusually severe weather, labor difficulties, shortages of labor, materials or
13 equipment, government moratoriums, delays in obtaining necessary permits,
14 licenses, or approvals due to actions or inactions by DTSC or other third parties,
15 earthquake, fire, flood or other casualty. In addition, any unavoidable delay in
16 obtaining the right of access for Soco West to the Site or any off-Site area shall also
17 constitute an event of force majeure. Delay caused by an event of force majeure
18 shall be deemed not to be a violation of this Decree, and this delay shall not be
19 counted in determining the time during which such work shall be completed, or such
20 act performed, whether such time be designated by a fixed date, a fixed time or a
21 reasonable time, and such time shall be deemed to be extended for the effective
22 period of the delay equal to the actual days lost attributable to the effect of the event
23 of force majeure. Soco West shall notify DTSC in writing as soon as practicable
24 after the occurrence of the force majeure event. Such notification shall describe, to
25 the extent known, the anticipated length of the delay, the cause or causes of the
26 delay, the measures taken and to be taken by Soco West to minimize the delay and
27 the timetable by which these measures will be implemented. If DTSC does not
28 agree that the delay is attributable to a force majeure, then the matter may be subject

1 to the dispute resolution procedures set forth in Section IX of this Decree
2 (DISPUTE RESOLUTION).

3 **XV. NO ADMISSION OF LIABILITY**

4 The actions undertaken by Soco West in accordance with this Consent Decree
5 do not constitute an admission of liability for any purpose, by Soco West or on the
6 part of any of the Defendants, and nor do they constitute a waiver of any rights or
7 claims that such parties have or may have against any other party or person, except
8 as otherwise provided in this Consent Decree with respect to claims against the
9 Plaintiffs. Neither this Consent Decree, the First Decree, nor any drafts of this
10 Decree or the First Decree, are to be introduced as evidence in any other proceeding
11 for the purposes of establishing any alleged liability with respect to the Site on the
12 part of any of the Defendants herein.

13 **XVI. FUTURE SETTLEMENTS**

14 DTSC agrees that it will notify Soco West of negotiations with any other
15 party that is potentially liable for the cleanup of the contamination at the Site, and
16 that it will permit Soco West to participate in such negotiations to the extent that the
17 negotiations may lead to a proposed consent decree or settlement agreement that
18 may adversely affect the rights of Soco West to recover response costs or obtain
19 contribution for costs Soco West incurs pursuant to this Decree. As part of this
20 process, DTSC nonetheless reserves the right to meet and negotiate in confidence
21 with any other potentially responsible party in the absence of Soco West.

22 Plaintiffs and Soco West agree that any funds received by Plaintiffs from any
23 other persons as a result of any administrative consent order, consent decree, or
24 similar settlement with respect to the Site, shall be used only for the following
25 purposes (1) to reimburse DTSC and other governmental agencies for unreimbursed
26 costs they have incurred or will incur at the Site that are not inconsistent with the
27 NCP; (2) to fund cleanup and investigatory work needed at the Site that has not been
28 successfully undertaken by Soco West or other parties, or (3) to fund, to the extent

1 permitted by law, an interest bearing, site-specific account, which shall be used to
2 pay for assessment, monitoring or cleanup work at the Site that is not inconsistent
3 with the NCP.

4 **XVII. CLAIMS AGAINST OTHER PERSONS**

5 Nothing in this Decree shall in any way constitute a waiver or release of any
6 claims and rights that Plaintiffs or Defendants have or may have against any other
7 potentially responsible party for the Site, and except as otherwise provided in this
8 Decree, Plaintiffs and Soco West reserve any and all rights they have or may have
9 against any prior owners and/or operators of the Site, and/or any other potentially
10 responsible parties.

11 **XVIII. FULL AND COMPLETE DECREE**

12 This Second Decree, along with the First Decree, contain all of the covenants
13 and agreements between Plaintiffs, on the one hand, and Defendants, on the other,
14 with respect to the Site, and Plaintiffs and Soco West acknowledge that no
15 representation, inducement, promise or agreement has been made by or on behalf of
16 any of the Parties except those covenants and agreements embodied in the First
17 Decree and in this Second Decree. No agreement, statement or promise not
18 contained in the First Decree or this Second Decree shall be valid or binding as
19 between Plaintiffs on the one hand, and Defendants on the other, unless the
20 agreement is in writing, signed by the party to be bound and, where appropriate,
21 approved by the Court.

22 **XIX. PUBLIC COMMENT**

23 This Decree shall be subject to a public comment period of not less than thirty
24 (30) days. Notice of the proposed entry of this Decree shall be published in the
25 California Regulatory Notice Register. If DTSC receives comments that disclose
26 facts or considerations indicating that this Decree is inappropriate, improper or
27 inadequate, then DTSC may (i) withdraw its agreement to this Decree, or (ii) seek to
28 modify this Decree with the consent of Soco West.

1 **XX. NOTICE TO THE UNITED STATES AND U.S. E.P.A.**

2 Within fifteen (15) days of the date that this Decree is signed by all Parties,
3 DTSC will serve copies of this Decree and the Complaint, as amended, on the
4 Administrator of the U.S. EPA, the Attorney General of the United States and the
5 offices of U.S. EPA, Region IX.

6 **XXI. EFFECTIVE DATE**

7 The Effective Date of this Decree is the date upon which the Court enters an
8 order approving this Decree.

9 **XXII. RETENTION OF JURISDICTION**

10 Notwithstanding any dismissal of this action, this Court retains jurisdiction
11 over both the subject matter of the Complaint and this Decree, for the purposes of
12 enabling any of the Plaintiffs and/or Defendants to apply to this Court at any time
13 for such further order or relief as may be necessary or appropriate for Dispute
14 Resolution in accordance with Section IX (DISPUTE RESOLUTION) of this
15 Decree, or to effectuate the terms of this Decree or enforce compliance with this
16 Decree.

17 **XXIII. MISCELLANEOUS**

18 A. The Parties to this Decree understand and agree that this Decree is
19 being entered into for the benefit of the DTSC, the State Accounts, Soco West, the
20 Soco West Related Parties, Holchem, the Holchem Related Parties, and the
21 Benjamin Defendants, and that the Soco West Related Parties, Holchem, the
22 Holchem Related Parties, and the Benjamin Defendants are all recognized third-
23 party beneficiaries to this Decree, with all rights as may be provided to them
24 hereunder, including but not limited to, rights to the protections provided to them
25 under Section XI (COVENANTS NOT TO SUE) and Section XIII
26 (CONTRIBUTION PROTECTION), and any other benefits and protections
27 conferred upon such third-parties by this Decree.

28 B. Each undersigned representative of DTSC and Soco West certify that

1 he or she is fully authorized to enter into the terms and conditions of this Decree,
2 and to execute and legally bind such party to this Decree.

3 C. A copy of this Decree may be recorded with respect to the Facility
4 property with the Los Angeles County Recorder, and a legal description of the
5 Facility property is attached hereto as Exhibit "A." The terms of this Decree shall
6 be binding on future owners and operators of the Facility. The obligations of future
7 owners and operators of the Facility shall be further specified in any Covenant for
8 Environmental Restrictions that may be recorded against the Facility.

9 D. This Decree is entered into and shall be construed and interpreted in
10 accordance with the laws of the State of California.

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1 E. Soco West shall identify, on the attached signature page, the name and
2 address of an agent who is authorized to receive notice on behalf of Soco West with
3 respect to all matters arising under or relating to this Decree. Soco West hereby
4 agrees to receive notice in that manner.

5
6 SO ORDERED, this 23 day of July, ²⁰⁰⁷~~2006~~

7
8 Quincy B. Collins
9 United States District Judge

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14 DATED: 3-30-2007

The California Department of Toxic
Substance Control; The California
Hazardous Substance Account; The
California Hazardous Waste Control
Account; The Toxic Substances Control
Account; and the Site Remediation
Account

15 By: Sayaren Amir
16 Sayaren Amir
17 CHIEF, SOUTHERN CALIFORNIA
18 CLEANUP OPERATIONS
19 BRANCH, GLENDALE OFFICE.
20 CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL

SOCO WEST, INC.

21 DATED: Dec 18, 2006

22 By: Ralph J. Zimbardo
23 Its: President

24 Name and Address of Person authorized to
25 receive notice on behalf of Soco West
26 pursuant to this Decree

27 Ralph J. Zimbardo, President
28 Soco West, Inc.
120 White Plains Road
Tarrytown, NY 10591
Telephone: (914) 366-7250

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 THOMAS GREENE,
Chief Assistant Attorney General
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Assistant Attorney General
4 DENNIS A. RAGEN, State Bar No. 106468
Deputy Attorney General
5 110 West A Street, Suite 1100
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6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2016
Fax: (619) 645-2012
8 Email: Dennis.Ragen@doj.ca.gov

9 Attorneys for Plaintiff
Hazardous Waste Control Account

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13
14 **THE CALIFORNIA DEPARTMENT**
15 **OF TOXIC SUBSTANCES CONTROL,**
16 **et al.,**

17 Plaintiffs,

18 v.

19 **HOLCHEM, INC., et al.,**

20 Defendants .

No. 99-12467 AC

**NOTICE OF ENTRY OF
SECOND CONSENT DECREE**

21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

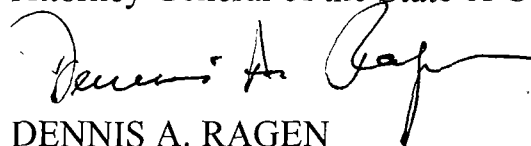
22 **PLEASE TAKE NOTICE** that Plaintiffs' *Motion for Judicial Approval of*
23 *Second Consent Decree* was heard in the above entitled court on July 23, 2007.
24 The motion was granted. The Court signed the Second Consent Decree on July
25 23, 2007, and the Second Consent Decree was entered on **July 25, 2007**. Prior to
26 signing and entering the decree, the Court, on stipulation of the parties to the
27 Decree, made a correction by interlineation at page 33 line 5.

28 ///

1 A copy of the signed, entered Second Consent Decree is served on the parties
2 to this action concurrently with this Notice.

3 Dated: August 9, 2007
4
5

6 EDMUND G. BROWN JR.
Attorney General of the State of California

7 
8

9 DENNIS A. RAGEN
Deputy Attorney General
Attorneys for Plaintiff
10 Hazardous Waste Control Account
11

12 NOTICE OF ENTRY
SD1997CV0407
13
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1 **DECLARATION OF SERVICE BY U.S. MAIL**

2

3 Case Name: The California Department of Toxic Substance, et al. v. Holchem, Inc., et al.

4 No.: United States District Court, Central District No. 99-12467ABC

5

6 I declare:

7 I am employed in the Office of the Attorney General, which is the office of a member of
8 the California State Bar, at which member's direction this service is made. I am 18 years of age
9 or older and not a party to this matter. I am familiar with the business practice at the Office of
10 the Attorney General for collection and processing of correspondence for mailing with the United
11 States Postal Service. In accordance with that practice, correspondence placed in the internal
12 mail collection system at the Office of the Attorney General is deposited with the United States
13 Postal Service that same day in the ordinary course of business.

14 On August 9, 2007, I served the attached NOTICE OF ENTRY OF SECOND CONSENT
15 DECREE and file stamped copy of Second Consent Decree entered on July 25, 2007, by placing
16 a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
17 internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite
18 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

19

20 Robert Elliott, Esq.
21 Office of Legal Counsel, Dept. of Toxic
22 Substances Control
1001 I Street
23 Sacramento, CA 95814-2828
Department of Toxic Substances

Richard Montevideo, Esq.
Rutan & Tucker LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626-1931
Attorneys for Holchem and Soco West

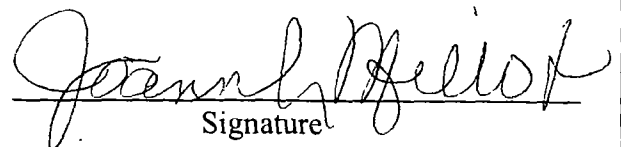
24 Elizabeth Adams
25 USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Mr. Herman Benjamin
Mrs. Isabel Benjamin
655 Corte Raquel
San Marcos, CA 92069
Defendants

26 I declare under penalty of perjury under the laws of the State of California the foregoing is true
27 and correct and that this declaration was executed on August 9, 2007, at San Diego, California.

28 Joanne S. Millot

Declarant


Signature



Hester

016H26502775

\$02.330

08/09/2007

Mailed From 92101

US POSTAGE

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF ATTORNEY GENERAL
110 WEST A STREET, SUITE 1100
P.O. BOX 85266
SAN DIEGO, CA 92186-5266

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San Francisco, CA 94105

